BEFORE THE BOARD OF PROFESSIONAL CONDUCT
OF THE SUPREME COURT OF OHIO

In re:

Complaint against

Jack Allen Blakeslee
Attorney Reg. No. 0001005

Respondent

Disciplinary Counsel

Relator

Case No. 2022-046

Findings of Fact, Conclusions of Law, and Recommendation of the Board of Professional Conduct

OVERVIEW

{¶1} This matter was heard on April 6, 2023 before a panel consisting of George Brinkman, Patrick M. McLaughlin, and Frank C. Woodside III panel chair. None of the panel members reside in the district from which the complaint arose.

{¶2} Respondent was present at the hearing and represented by Charles Kettlewell. Lia J. Meehan appeared on behalf of Relator.

{¶3} The alleged rule violation arises out of Respondent's inappropriate conduct set forth in a single count in the complaint. The parties entered into extensive stipulations of fact, a single rule violation, aggravating and mitigating factors, and stipulated to the admission of 11 exhibits.

{¶4} Based upon the parties' stipulations and the evidence presented at the hearing,[1] the panel concludes that Relator proved by clear and convincing evidence that respondent engaged in the professional misconduct outlined below. Upon consideration of the applicable aggravating and mitigating factors and case law, the panel recommends Respondent be publicly reprimanded.

[1] Respondent's testimony was, at all times, consistent with the stipulations.

FINDING OF FACTS AND CONCLUSIONS OF LAW

{¶5} Respondent was admitted to the practice of law in Ohio on November 19, 1976 and maintains an active practice as a criminal defense attorney. Respondent is subject to the Ohio Rules of Professional Conduct and the Supreme Court Rules for the Government of the Bar of Ohio. Respondent has not been disciplined previously.

Misconduct

{¶8} On June 1, 2021, Alexander Wells was indicted in the Guernsey County Court of Common Pleas for aggravated murder, an unclassified felony, with a specification that the victim was under the age of 13, a capital offense. Wells was also indicted for murder, an unclassified felony, involuntary manslaughter, a felony of the second degree, tampering with evidence, a felony of the third degree, two counts of endangering children, felonies of the second degree, and two counts of felonious assault, felonies of the second degree. *State of Ohio v. Alexander Wells*, Guernsey C.P. No. 21 CR 88.

{¶9} On June 7, 2021, Respondent appeared at Wells' arraignment and was formally appointed by the court to represent Wells.

{¶10} Michelle Wilkinson-Carpenter, the victim advocate involved with the case, also appeared at the aforementioned hearing. She is the Executive Director of Haven of Hope, a victim advocacy center located at 927 Wheeling Avenue in Cambridge. Respondent and Wilkinson-Carpenter have known each other professionally for many years.

{¶11} Both Respondent and Wilkinson-Carpenter were present at court proceedings held on June 11, 2021, August 12, 2021, August 16, 2021, and September 30, 2021.

{¶12} The administrative office for Haven of Hope is located down an alley approximately 0.2 miles from the Guernsey County Common Pleas Courthouse.

{¶13} On November 30, 2021, the day of Wells' pretrial hearing, Respondent deposited his feces into an empty Pringles can, without a lid, before leaving his home and drove with the can of feces to Cambridge.

{¶14} At approximately 8:10 a.m.-8:15 a.m., Respondent turned his vehicle down the alley in Cambridge where Haven of Hope's parking lot is located. At the entry to the alley, there is a sign on the side of the building indicating that Haven of Hope is down the alley.

{¶15} Respondent slowed his vehicle as he initially passed Haven of Hope's parking lot; drove further down the alley, passing by other parking lots; and turned around, to drive past Haven of Hope's parking lot a second time.

{¶16} Respondent slowed again as he passed Haven of Hope's parking lot a second time; threw the open Pringles can containing his feces on to Haven of Hope's parking lot, and drove to the Courthouse for Wells' 8:30 a.m. hearing.

{¶17} Wilkinson-Carpenter, who had observed Respondent throw the can out of the window of his vehicle toward Haven of Hope's parking lot, approached the item and discovered it was a Pringles can containing what appeared to be human feces.

{¶18} Wilkinson-Carpenter then left for the courthouse for Wells' pretrial hearing. Upon arrival at the courthouse, she saw that respondent was present for the pretrial hearing in the Wells case.[2]

{¶19} Wilkinson-Carpenter reported the incident to the Cambridge Police Department.

{¶20} Respondent was charged with and pled guilty to disorderly conduct and littering, both minor misdemeanors. Respondent paid a fine in the amount of $300 and court costs. *State of Ohio v. Jack Blakeslee*, Cambridge M.C. No. CRB2100975.

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[2] For reasons that have nothing whatsoever to do with the misconduct that is the subject matter of the instant disciplinary proceeding, Respondent was permitted to withdraw from the representation of Wells because of a substantiated and significant conflict of interest.

{¶21} Respondent testified that he engaged in similar conduct on approximately ten previous occasions, randomly choosing the location where he deposits the Pringles cans containing his feces. Respondent denies that he knew the parking lot where he deposited the subject can of Pringles was the parking lot of the Haven of Hope.

{¶22} Based upon the foregoing facts as evidenced by the testimony presented during the hearing before the panel, the parties' stipulations, and the exhibits entered into evidence, the panel finds by clear and convincing evidence that Respondent's conduct as alleged in the complaint violated the Prof. Cond. R. 8.4(h) [conduct that adversely reflects on the lawyer's fitness to practice law.]

AGGRAVATION, MITIGATION AND SANCTION

{¶23} When recommending sanctions for attorney misconduct, the panel must consider all relevant factors, including the ethical duties violated by Respondent, precedent established by the Supreme Court, and the existence of any aggravating and mitigating factors. Gov. Bar R. V, Section 13(A).

Aggravating Factor

{¶24} The parties have stipulated that there is a single aggravating factor: a pattern of misconduct. Gov. Bar R. V, Section 13(B)(3). The panel understands that the stipulated aggravating factor is based on Respondent's testimony that he had previously deposited Pringles' cans containing his feces in random locations.

{¶25} A "pattern of misconduct," is typically found where a respondent engages in multiple acts of misconduct, thus forming a pattern. For example, such a "pattern" involves a series of acts implicating different rules of conduct or a violation of one or more rules involving a number of different clients.

{¶26} In the present case there is but one rule violation—Prof. Cond. R. 8.4(h)—arising from one incident for which proof was presented. There is no evidence of when or where these prior incidents occurred. Whether these were "random" locations, as Respondent testified with regard to Haven of Hope, or targeted locations, such as Relator argued, we do not know from the record.

{¶27} Based upon the lack of proof the panel rejects the stipulation that there is a pattern of misconduct that constitutes an aggravating factor and finds that there are no aggravating factors.

Mitigating Factors

{¶28} The panel finds the following mitigating factors:

- Respondent has had a distinguished criminal defense trial practice for more than four decades with no prior disciplinary record [Gov. Bar R. V, Section 13(C)(1)];[3]
- Respondent made a full and free disclosure to the Board, demonstrated a cooperative attitude toward the proceedings, accepted full responsibility for his actions, was genuinely remorseful, and testified that following the activities in question there have been no further such incidents [Gov. Bar R. V, Section 13(C)(4)];
- Respondent presented evidence of good character and reputation [Gov. Bar R. V, Section 13(C)(5)]; and
- Other penalties and sanctions have been imposed upon Respondent [Gov. Bar R. V, Section 13(C)(6)].

{¶29} With regard to the "imposition of other penalties or sanctions," the panel notes that, as set forth above, Respondent was charged with disorderly conduct and littering, both minor misdemeanors; pled guilty to both; and paid a fine (in the amount of $300) and court costs.

{¶30} During the hearing, Respondent acknowledged that the public revelation of his inappropriate conduct proved most embarrassing. Hearing Tr. 66. Indeed, his inappropriate

[3] Respondent testified that he currently receives 2-3 criminal appointments a week ("for rape on down the line") for which he is paid $75 per hour. He receives appointments "from the common pleas court in Washington County and the municipal court, the Noble County Court, the Noble County Common Pleas Court, the Cambridge Municipal Court, and the Guernsey Common Pleas Court, and it goes on and on...." Hearing Tr. 49-50.

conduct has been the subject of multiple articles in the media, but those articles were not delineated with any specificity by Respondent or introduced into evidence at the hearing. However, as the Supreme Court recently noted, media reports of professional misconduct by a lawyer or judge does not "* * * constitute the imposition of a penalty or sanction that warrants mitigating effect * * *" *Disciplinary Counsel v. Carr*, ___ Ohio St.3d ___, 2022-Ohio-3633, ¶96.

{¶31} Gov. Bar R. V, Section 13(C)(7) provides that, under certain circumstances, the existence of a disorder may well be a mitigating factor in a disciplinary matter. As revealed during the hearing, Respondent, a Vietnam Veteran, has been treated by VA psychologists for PTSD. Respondent has made it abundantly clear that (1) his PTSD is not related to the incident in question, (2) his PTSD is not at all responsible for his inappropriate conduct in question, and (3) he is not claiming that his PTSD is a mitigating factor in this disciplinary matter.

Sanction

{¶32} The panel notes, as have the parties, that there are no cases dealing with conduct of the nature before us. Therefore, we begin with a few observations.

{¶33} We note that Respondent is the sole witness presented to the panel. Wilkinson-Carpenter did not testify.

{¶34} We next note that Respondent readily admits that he really has no reason, good or bad, for the performance of this "prank" as he calls it. Hearing Tr. 46. It seems more appropriate to call it "stupid" as Respondent characterized it. Hearing Tr. 48.

{¶35} This matter does not involve a client, the underlying case was not harmed by the actions of Respondent, and there is no evidence that the grievant was harmed in any way.

{¶36} Relator takes the position that Respondent intentionally and specifically deposited

the Pringles can in the parking lot of the grievant's employer. Respondent testified that he did not have any knowledge as to the location of Haven of Hope on November 30, 2021 [Hearing Tr. 46] and randomly deposited the Pringles can there with no knowledge that he was specifically depositing it in the parking lot of the grievant's employer. Hearing Tr. 20, 47. Relator contends that its position is supported by circumstantial evidence. However, in the face of Respondent's emphatic denial, which the panel finds credible, Relator's position is not supported by clear and convincing evidence.

{¶37} It is understandable that there is no presumptive sanction that applies to the unusual facts of this case, facts that clearly constitute misconduct. In 2013, the Supreme Court clarified the application of Prof. Cond. R. 8.4(h) to a lawyer's conduct. In *Disciplinary Counsel v. Bricker*, 137 Ohio St.3d 35, 2013-Ohio-3998, the Court stated:

> Prof. Cond. R. 8.4(h) is a catchall provision. In order to find a violation of Prof. Cond. R. 8.4(h), there must be clear and convincing evidence that the lawyer has engaged in misconduct that adversely reflects on the lawyer's fitness to practice law, even though that conduct is not specifically prohibited by the rules, or there must be proof that the conduct giving rise to a specific rule violation is so egregious as to warrant an additional finding that it adversely reflects on the lawyer's fitness to practice law.
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> *Id.* at ¶21.

{¶38} Although Prof. Cond. R. 8.4(h) focuses on conduct that "reflects on the lawyer's fitness to practice law," it is not restricted to conduct undertaken in the practice of law. Arthur Greenbaum, *Ohio Legal Ethics Law Under the Rules of Professional Conduct*, (2022) at 1357. That is, even though Respondent's conduct may not have been undertaken within the practice of law, Prof. Cond. R. 8.4(h) nevertheless applies.

{¶39} Relator requests a fully stayed, six-month suspension while Respondent suggests that a public reprimand would be appropriate. The parties acknowledge that there are very few

cases providing the panel guidance one way or another.

{¶40} In *Columbus Bar Assn. v. Linnen*, 111 Ohio St.3d 507, 2006-Ohio-5480, Linnen approached at least 30 different women throughout Franklin County over a two-year period wearing only athletic shoes and a stocking cap and photographed their reactions. He occasionally pinched their "rear end * * * or whatever" to get their attention and masturbated in front of the first couple of victims. He stipulated to violations of former DR 1-102(A)(3) [prohibiting illegal conduct involving moral turpitude] and 1-102(A)(6) [prohibiting conduct that adversely reflects on a lawyer's fitness to practice law]. He pleaded guilty to 53 misdemeanor charges and was sentenced to 18 months of work release, fined $3,000, and ordered to continue counseling. In the ensuing disciplinary proceeding, Linnen, among other things, did not genuinely acknowledge the wrongful nature of his conduct. He was indefinitely suspended.

{¶41} In closing, Relator first cited to *Butler Cty. Bar Assn v. Blauvelt*, 160 Ohio St. 333, 2020-Ohio-3325.[4] In that case Blauvelt was driving naked and was caught by the police. In another instance the Ohio State Highway Patrol received a report that Blauvelt was masturbating while driving; stopped his vehicle; and determined that he was driving while naked and was intoxicated. In the disciplinary case, the Board found that he had engaged in a pattern of misconduct, submitted a false statement during the disciplinary process, and demonstrated the existence of a qualifying mental disorder (bipolar disorder, episodic alcohol abuse, and other personality factors). The Board found *Linnen* instructive. Blauvelt received a two-year suspension from the practice of law, with the suspension fully stayed on several conditions.

{¶42} As Relator acknowledged in its closing argument, there are notable differences in the conduct of Blakeslee and the conduct of Blauvelt (including the fact that there was an

[4] The citation is to the first disciplinary action involving Blauvelt. Thereafter, in *Butler Cty Bar Assn v. Blauvelt*, 168 Ohio St. 268, 2022-Ohio-2108, Blauvelt was indefinitely suspended for three additional counts of public indecency.

underlying sexual motivation in *Blauvelt* whereas there is no such motivation in the present action) and the conduct of Blakeslee is less egregious than that of Blauvelt. Hearing Tr. 72.

{¶43} In closing, Relator also cited to a very recent Oklahoma disciplinary decision, to wit: *State ex rel. Oklahoma Bar v. Bailey*, 2023 OK 34 (April 4, 2023). The case involved a myriad of counts of substantial misconduct, the vast majority of which are in no way relevant to the present action, leading to disbarment. In that case, Bailey was required to return a refund check to a client. The bar association determined that the refund check to the client had feces on it.

{¶44} Paragraph 45 of the *Bailey* opinion reads as follows:

> Rule 1.3 (RGDP) states a lawyer should not "act contrary to prescribed standards of conduct" when the act "would reasonably be found to bring discredit upon the legal profession." Whether we view respondent's delivery of the soiled check as an intentional act, as argued by the Bar, or as an unintentional act, as argued by respondent, such conduct is contrary to prescribed standards of conduct in our society where people recognize the potential harm from exposure to fecal matter and also view its transfer from one to another as criminal in some circumstances. Respondent's delivery of the soiled check was discussed by public media. Respondent's conduct brought discredit to the legal profession. Respondent's conduct violated Rule 1.3, and was a violation of the one-year diversion agreement. [Internal footnotes omitted]

{¶45} The Supreme Court Rules for the Government of the Bar of Ohio do not have a provision that is similar to Oklahoma Rule 1.3.[5] However, the logic of the decision is instructive.

{¶46} There is a long line of Supreme Court of Ohio cases noting that the primary purpose of the disciplinary sanction is not to punish the offender but to protect the public. In

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[5] The closest thing to Oklahoma Rule 1.3 can be found in the Appendix to the Rules for the Government of the Bar in Ohio which contains "A Lawyer's Creed," an aspirational statement issued by the Supreme Court in 1997 that is not binding on lawyers. It contains the following language: "To The Profession, I offer assistance in keeping it a calling in the spirit of public service, and in promoting its understanding and an appreciation for it by the public. *I recognize that my actions reflect upon our system of justice and our profession, and I shall conduct myself accordingly*. Italics added.

particular, see *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 2004-Ohio-4707, where the Court stated:

> [I]n determining the appropriate length of the suspension and any attendant conditions, we must recognize that the primary purpose of disciplinary sanctions is not to punish the offender, but to protect the public. [Internal citations omitted.]
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> *Id.* at ¶53.

{¶47} In summary, Respondent is an experienced trial attorney who has practiced for over four decades, and who continues to receive court appointments, without any prior rule violations. Respondent has done something that, in his own words, was "stupid" [Hearing Tr. 48]. However, the conduct did not involve or harm a client or member of the public, or negatively impact a pending case. He has been the subject of articles (and appropriately so) in the media and otherwise. There is no reason to think there will be any similar acts of misconduct in the future. There are a good number of mitigating factors and no aggravating factors. There is absolutely no factual basis to conclude that the public needs, in the future, to be protected from any violative acts of Respondent.

{¶48} The introductory portion of Gov. Bar R. V, Section 13(C) dealing with mitigation reads as follows: "Mitigation. The following shall not control the discretion of the Board, but may be considered in favor of recommending a less severe sanction* * *." In the present case the mitigating factors favor a "less severe" sanction, to wit: a public reprimand. The panel recommends imposition of a public reprimand.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct considered this matter on June 9, 2023. The Board voted to adopt findings of fact, conclusions of law, and

recommendation of the hearing panel and recommends that Respondent, Jack Allen Blakeslee, be publicly reprimanded and ordered to pay the costs of these proceedings.

Pursuant to the order of the Board of Professional Conduct, I hereby certify the forgoing findings of fact, conclusions of law, and recommendation as that of the Board.

RICHARD A. DOVE, Director